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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,583	07/29/2002	Franco Leonardi	200-0598	5113

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EXAMINER	
PADGETT, MARIANNE L	

ART UNIT	PAPER NUMBER
1762	

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/064,583	LEONARDI ET AL.	
	Examiner	Art Unit	
	Marianne L. Padgett	1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16/6/05(Board decision),10/1/03, 3/10/04*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3/10/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. On reviewing the decision by the Board of Patent Appeals and Interferences reversing the rejection of examiner Pianalto, and subsequently updating the case with respect to prior art and co-pending cases, the new art came to light, which is applied in following rejections and answers questions raised by the Board of the ability to spray, or the ability to kinetic spray the claimed materials.

On review of this case, the present examiner notes that the amendment to the specification dated 10/01/2003, which was accepted by examiner Pianalto to be entered in the advisory action of 10/01/2003, cannot physically be entered, because every single direction for paragraph number and page number is mismatched from the actual written paragraph being amended in the electronic version of the specification which is in the only one in the IFW file, i.e. the amendment is completely informal. Furthermore, to delete figure 5 would make the paragraphs that were being amended in the 10/01/2003 amendment to cryptic be meaningful, and the amendment appears to be broadening the scope of the specification by changing to discussion directed to the motor in figure 5 to something generic that only might be a voter, as the original disclosure did not say that the configuration shown in figure 5 was four example and motor, it said it was a motor and it said that 44 was the core not just a generic carrier. It is unclear to the examiner what additional scope of electric machines applicant is attempting to broaden this discussion in the specification to beyond that of motors. As this amendment can't actually be amended into the specification, though new matter rejection is made at this time. Also, for applicants' information it appears that the paragraphs that they labeled 16, 59 & 60 are paragraphs [0015], [0058] & [0059] on pages 5 and 11-12, respectively, in the specification of the PTO's file. Due to current scanning procedures the examiner cannot fix this error.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3 & 7-8 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gambino et al (6,773,765,B1).

In Gambino et al, see the abstract; Fig 1-2; col. 1, lines 10-30; summary; col. 3, lines 8-30+; col. 4, lines 25-58; col. 5, lines 37-68+; col. 6, line 50-col. 7, line 47. Gambino et al (6,773,765,B1), thermal sprays claimed magnetic particles in resin binder (matrix) materials, such that the resin is softened or melted and not the magnetic particles, and employs magnetic fields to orient the particles before the resin matrix material cools and solidifies, i.e. while it is in a fluid/semi-fluid state, thus resulting in anisotropic magnetic coatings, which would inherently have a permanent magnetic moment and microstructures within claimed scope or substantially the same as claimed. Gambino et al. teach that magnetic particles have an average particle size from about 1 μm-10 μm (col. 6, lines 34-67+, especially 44-47), and the matrix material may have average particle sizes from 30 μm to about 250 μm, and that the matrix material particles are about 20-60 times larger on average than the magnetic particles (col. 7, lines 35-47), which assuming a 325 mesh equals 45 μm particle size, as indicated by US standards sieve sizes, the claim of less than 325 mesh significantly overlaps with taught magnetic particle sizes and to a lesser extent overlaps with possible binder particles sizes. Note that all of these claims only require a "binder material", which is a description of use and broad physical effects, but does not limit composition, hence the flexible resin materials used as binders in Gambino et al, are considered to read on the broad binder material limitations of there claims. Also note in col. 1, lines 10-16 suggestions of use in electromechanical devices e.g. generators,...motors,...or various electronic applications, e.g. loudspeakers..., as well as various discussions on substrate materials in col. 4, lines 55-col. 5, line 9, noting desired shapes to be formed include those producing solenoids, i.e. coils, or col. 10, lines 55-64 where materials were sprayed onto Teflon coated pans, which may also be considered to read on the claimed carrier. As described above, the structure of the product of Gambino et al. is considered to be encompassed by the structure required by the present claims, so it is considered to read on substantially identical products.

Alternately, while Gambino et al. teach thermal spraying materials that are claimed by applicant to produce types of products claim by applicant, they do not teach kinetically spraying these materials, however as pointed out by the Board, the materials that produce the product need not actually have been sprayed by the technique stated in the claims, as long as the same product could have been produced by kinetically spraying. It is considered that these materials that are deposited via thermal spraying technique of Gambino et al. have the capability of being kinetically spray, as application via a spray technique has been shown to be effective and use of kinetic spraying *per se* does not designate any specific temperature utilization or state of the generically recited material on deposit, that would necessarily be differentiated from the product of Gambino et al., especially considering no necessary differences in the microstructures of permanent magnetic particulate material embedded in a binder material, and as read in light of applicant's own specification where paragraph number [0008] indicates that kinetic spraying is a species of thermal spraying by saying that it is "Another family of thermal spray technologies that does not use high temperatures for producing molten droplets is collectively known as kinetic spraying...". Note that Gambino et al. is specifically directed to use of lower temperatures to avoid demagnitizing the magnetic particles by overheating them as would happen if it were undesirably melted. Hence, it would have been obvious to one of ordinary skill in the art that the products of Gambino et al. are within the scope of those claimed, thus further indicating substantially identical products produced by Gambino et al. and claimed by applicant.

4. Claims 5-6 & 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gambino et al, optionally considering admitted prior art, or Wehde (3,739,248), or Porrazzo et al (6,137,891) for claims 9-10.

While Gambino et al. do not specifically teach substrates or carriers made of iron or aluminum nor delineate usage in a configuration as indicated by claims 9-10, it would been obvious to one of ordinary skill in the art, that the various useful applications listed in Gambino et al. would have been

expected to be inclusive of those that would employ Fe or Al, and the specific example employing a Teflon coated pan as an exemplary carrier in the coating/formation process cited in col. 10, would have typically been expected to have been either an aluminum or steel base material on which the Teflon was deployed. With respect to coils on components as claimed, again note above cited uses, specifically in generators, motors & solenoids (which are electrically conductive coils of wire), such that it would have been obvious to one of ordinary skill in the art to construct conventional multi-part generators or motors which may employ solenoids, i.e. coils, using spray technique of Gambino et al. as suggested and thus producing products which read on these more specific claimed products. Applicants' background discussion in paragraph [0005] of the specification is supportive of these types of structures being conventionally known, and paragraph [0058] explicitly states that such configurations are "well-known in the art".

It is noted that while Gambino et al. teaches binder materials they are resins, not the specific metal particle binder material of dependent claim 4 not listed above, as there is no suggestion that metals could alternately be used as the binder therein.

Alternately, Wehde teaches electrical motor structures that use windings (i.e. coils) and permanent magnets associated in configurations that appear to be as claimed (abstract; figures, especially 1 & 3; col. 2, line 44-col., line 61+), where it is noted that the magnetic material may be applied by spraying granular permanent magnet material mixed in a binder onto the stator. Similarly, Porrazzo et al (6,137,891) teach making transducers for diaphragms with magnets that may be sprayed on an insulating layer used to create magnetic fields aligned to effect coils that are electrical conductor layers which may also contain magnet material on a separate electrically insulating sheet (abstract; figures such as 1; col. 2, lines 1-9; col. 3, lines 5-43; col. 6, lines 10- 44, especially 15-20). As Gambino et al. is teaching of their spraying technique for use in making generators, motors, loudspeakers, etc., it would have been obvious to one of ordinary skill in the art to apply techniques as taught therein in the production of motors or

loudspeakers of constructions as disclosed by Wehde or Porrazzo et al, respectively, as they recommend creating their magnetic layers via spray techniques consistent with those off Gambino et al., hence would have been expected to effectively create the products of the secondary references, which would thus read on the claimed products.

5. Alternately, claims 1-3 & 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gambino et al as applied in sections 3-4 above., view of Alkhimov et al (5,304,414) or Van Steenkiste et al (6,139,913), optionally considering admitted prior art, or Wehde (3,739,248), or Porrazzo et al (6,137,891) for claims 9-10 as discussed in section 4 above.

Gambino et al differs form applicants' claims by employing thermal spraying rather than "kinetically spraying" in producing the claimed products, however Alkhimov et al (abstract; col. 1, lines 5-20+; col. 2, lines 48-62; col. 3, lines 53-col. 4, line 20; col. 9, lines 13-22; and col. 15, line 38 -col. 16, line 9, esp. 3) or Van Steenkiste et al (913) (abstract; Fig 2; col. 1, lines 5-30 & 50-55; col. 2, lines 49-57; col. 3, lines 1-5 & 59-67; col. 4, lines 18-23 & col. 5, line 60-col. 6, line 10), teach kinetic spraying with the suggestion of use for applying mixtures of particles including magnetic, where kinetic spraying is taught to be advantageous over thermal spray type techniques, because of the ability to produce desirable adhesion at lower temperatures that preserve important properties of coating materials, thus one of ordinary skill would have been motivated to employ such a kinetic spray coating technique in the process of Gambino et al, as it would have been advantageous for reasons taught and consistent with the primary reference's teachings on keeping the temperature below those that will melt the magnetic particles, thus would prevent damage to their desired magnetic properties. Therefore, the secondary references not only show the capability of use of kinetic spraying with magnetic particles in general, i.e. that the particulates of Gambino et al. would have been expected to be capable of being sprayed via kinetic spraying, but provide reasons why one of ordinary skill would have been expected to utilize such technique in the production process in order to optimize their products properties, which would then produce products

identical to those claimed. It is noted that while the secondary references provide a suggestion that it might be possible to produce products with superior properties, they do not necessitate that the properties would necessarily be superior given the breath of applicants' claims, but do as stated provide for the obviousness of the use of kinetic spraying in Gambino et al., and hence the resultant product produced thereby.

It is noted that Van Steenkiste et al (913) has generic teaching on kinetic spraying that are refinements of those of Alkhimov et al, with further teachings on spray coating mixtures of particles, but while neither of these references more than generally suggest use of magnetic particles in their kinetic spray technique, as discussed above, Gambino et al. was seen to show use of claimed mixtures of binder and magnetic particles in a thermal spraying technique, that kinetic spray was recommended to replace by the secondary references.

6. Claims 1 & 3-4 or rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Given that the magnetic materials can be iron or nickel or cobalt and that the binder can also be iron or nickel or cobalt, the examiner is unclear how iron particles mixed in iron particles, or the like, can be considered magnetic particles embedded into binder. As these species of the generic classes defined their scope is not clear that they have any necessary difference between the generic classes of materials.

7. Other art of interest for products made with magnetic powder includes Takaya et al (2002/0039667 A1) with discussions of composite magnetic materials in motors, in transformers, in choke coils, etc.

8. Claims 1, 4 & 9-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11, 20 & 27 of copending Application No. 10/708,072. Although the conflicting claims are not identical, they are not patentably

distinct from each other because they encompass overlapping scope of subject matter, specifically the binder material of the present claims are both broader in the independent claim and narrower if the depending claim which lists specific materials, while the (072) application claims use of soft magnetic binder materials, which in light of discussion in the specification [0006] is considered to encompass the iron of present claim 4. The persistent magnetization of the (072) application is considered equivalent to the deposition of permit magnetic material of the present case, with both sets of claims kinetically spraying admixtures to form their products. The specific structures claimed in the (072) application correspond to those of claims 9-10 of the present case. The differences in order of claiming and variation in scopes within obvious to one of ordinary skill in the art has obvious variations.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne L. Padgett whose telephone number is (571) 272-1425. The examiner can normally be reached on M-F from about 8:30 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks, can be reached at (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MLP 11/(25,26,27&30)/2005

MARIANNE PADGETT
PRIMARY EXAMINER

JACQUELINE M. STONE
DIRECTOR
TECHNOLOGY CENTER 1700

The opinion in support of the decision being entered today was ***not*** written for publication and is ***not*** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANCO LEONARDI,
JOHN MATHEWS GINDER and ROBERT CORBLY MCCUNE

Appeal No. 2005-1134
Application 10/064,583

ON BRIEF

Before WARREN, OWENS and KRATZ, *Administrative Patent Judges.*

WARREN, *Administrative Patent Judge.*

Decision on Appeal and Opinion

We have carefully considered the record in this appeal under 35 U.S.C. § 134, including the opposing views of the examiner in the answer and appellants in the brief and reply brief, and based on our review, find that we cannot sustain the rejections advanced on appeal: appealed claim 1 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over British Patent 1 444 858 ('858 patent) (answer, page 3); and appealed claims 2 through 10 under 35 U.S.C. § 103(a) as being unpatentable over the '858 patent (answer, page 4).[1]

[1] Appealed claims 1 through 10 are all of the claims in the application. See the appendix to the brief.

In order to consider the examiner's application of the '858 patent to the claims, we must first interpret the language of appealed claim 1, which determination is controlling with respect to the disposition of this appeal. The plain language of appealed claim 1, styled in product-by-process format, *see generally, In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985), given the broadest reasonable interpretation in light of the written description of the specification as it would be interpreted by one of ordinary skill in this art, provides that the claimed electric motor comprises at least a first component formed from a composite admixture of permanent magnetic material and a binder kinetically sprayed atop a carrier, wherein the composite admixture has microstructures of permanent magnet material embedded in the binder material. Thus, the claim encompasses any electric motor having any component that is formed from any permanent magnetic material and any binder material therefor which can be kinetically sprayed to form a composite admixture having the specified microstructure on the top of any carrier. *See In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Accordingly, as appellants point out and contrary to the examiner's position, the process limitation of claim 1 must be given weight because such limitations characterize the claimed product.

We agree with appellants that the '858 patent does not utilize permanent magnetic material and a binder therefor which can be kinetically sprayed and thus does not form a composite admixture having microstructures of such permanent magnet material embedded in such binder material as specified in claim 1. Thus, as appellants argue, the fact that the claimed component of the claimed motor may have similar generic properties to the structure prepared from a paste of material in a polymer binder which is subsequently magnetized, does not alone constitute evidence that the claimed electric motor and the product of the '858 patent are identical or substantial identical. *See, e.g., In re Spada*, 911 F.2d 705, 708-09, 15 USPQ2d 1655, 1657-58 (Fed. Cir. 1990); *In re Best*, 562 F.2d 1252, 1255-56, 195 USPQ 430, 433-34 (CCPA 1977); *In re Skoner*, 517 F.2d 947, 950, 186 USPQ 80, 82 (CCPA 1975).

Accordingly, on this record, and the absence of rebuttal evidence by the examiner establishing that the claimed and prior art products are identical or substantially identical in response to appellants' arguments, *See generally, Spada*, 911 F.2d at 707 n.3, 15 USPQ2d at

1657 n.3; *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984), the examiner has failed to again establish a *prima facie* case of anticipation, *see generally*, *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); *Spada*, 911 F.2d at 707, 15 USPQ2d at 1657; *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677-78, 7 USPQ 1315, 1317 (Fed. Cir. 1988); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984), and a *prima facie* case of obviousness. *See generally, In re Rouffet*, 149 F.3d 1350, 1358, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998); *Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629-30 (Fed. Cir. 1996); *In re Fine*, 837 F.2d 1071, 1074-76, 5 USPQ2d 1596, 1598-1600 (Fed. Cir. 1988); *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

Therefore, we reverse all of the grounds of rejection.

The examiner's decision is reversed.

Reversed

CHARLES F. WARREN)
Administrative Patent Judge)
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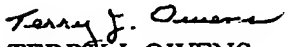
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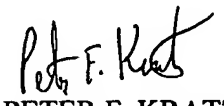
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